

5. Notwithstanding defendant Boeing's unilateral self-serving recitations concerning the implications and effect of its Offer of Judgment such recitations are of no moment, do not change the law on this issue and are mere surplusage that should be stricken.

Dated and signed this 17th day of May, 2010.

Respectfully submitted,

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By: 
Philip R. Russ, SBN 17406000

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of May, 2010, I electronically filed the foregoing "Notice of Acceptance of Second Offer of Judgment to Jesus Lozano" with the Clerk of the Court for the Western District of Texas, by using the CM/ECF system which will send a notice of electronic filing **to all parties** who have appeared and registered with CM/ECF.



Philip R. Russ

Exhibit “A”

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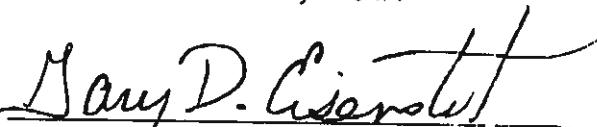
liability by Boeing. Boeing has denied and continues to deny all of the allegations made by Lozano, and expressly denies any liability therefore. An acceptance of the Offer by Lozano shall not constitute a judgment on the merits of the claims against Boeing, nor a finding of liability against Boeing, and shall not be admissible as evidence in any proceeding. *See* Doc. No. 125.

If the Offer is not accepted by written notice, it shall be deemed withdrawn and shall not be admissible as evidence in any hearing, except in a proceeding to determine costs and recoverable attorneys' fees, if any. If any judgment finally obtained by Lozano is not more favorable than this Offer, Lozano must pay Boeing's costs incurred after the date of this Offer.

Dated this 17th day of May, 2010.

Respectfully submitted,

FIGARI & DAVENPORT, L.L.P.

By: 

Gary D. Eisenstat

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ATTORNEYS FOR DEFENDANT
BOEING AEROSPACE OPERATIONS, INC.

CERTIFICATE OF SERVICE

On the 17th day of May, 2010, the foregoing instrument was sent by facsimile to counsel for Jesus Lozano, Philip R. Russ, Law Offices of Philip R. Russ, 2700 South Western, Suite 1200, Amarillo, Texas 79109, Jon Powell, The Powell Law Firm, 115 East Travis Street, Suite 535, San Antonio, Texas 78205, and Jason Speights, Speights Law Firm, LLP, 825 W. Bitters Road, Suite 104, San Antonio, Texas 78216.


Gary D. Ejsenstat